

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA : Criminal No.: 00 CR. 603 (AGS)

v. : Filed: June 1, 2000

MICHAEL BEBERMAN, : Violations: 15 U.S.C. § 1
26 U.S.C. § 7201

Defendant. :

----- X

INFORMATION

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America, acting through its attorneys, charges:

1. Michael Beberman ("Beberman") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Beberman resided in Queens, New York until November 1997, and in Melville, New York thereafter. From May 1995, Beberman was employed as a salesperson at a company ("CC-1") that was a co-conspirator. CC-1 was a New York State corporation with principal offices in Ozone Park, New York. CC-1 sold food and related items.

3. The Board of Education of the City of New York ("NYCBOE") was the entity responsible for operating New York City's public school system, the largest

in the United States. Its annual budgets, which approached \$10 billion, were funded by the federal, state, and city governments. It serviced a student population of nearly 1.1 million and operated more than 1,500 facilities. It served approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

4. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools received food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

5. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part of the contract. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

6. The NYCBOE required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

7. The Department of Citywide Administrative Services of the City of New York ("DCAS") was the agency that provided support to various city entities that served the public, including the entities responsible for overseeing hospitals, jails, homeless shelters, and other facilities. DCAS became responsible for providing this support in July 1996 when it replaced the New York City Department of General Services. Through its Division of Municipal Supply Services, DCAS conducted competitive bidding for the supply of necessary items, including food, on behalf of several New York City entities, including the Health and Hospitals Corporation ("HHC"), the Department of Juvenile Justice ("DJJ"), the Department of Correction ("DOC"), the Department of Homeless Services ("DHS"), the Human Resources Administration ("HRA"), and the Administration for Children's Services ("ACS").

8. The Newark Public Schools operated the public school system in Newark, New Jersey. That system, the largest in New Jersey, serviced approximately 44,000 students and operated more than 80 facilities. The Newark Public Schools served more than 7 million meals each year, and spent

about \$7 million annually on food and milk. The Newark Public Schools' annual budgets were funded by the federal, state, and city governments, including funding pursuant to the National School Lunch Act of 1946. The Newark Public Schools solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the Newark Public Schools were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period.

9. The Nassau County Department of General Services was the agency responsible for managing procurement on behalf of the agencies of Nassau County, New York, including the agency that administered the Nassau County correctional facilities.

10. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

11. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They include Selwyn Lempert ("Lempert"), an employee of a company located in the Bronx that sold food and

related items.

II. TRADE AND COMMERCE

12. During the period covered by this Count, CC-1 purchased substantial quantities of food for resale to the NYCBOE, DCAS, the Newark Public Schools, and the Nassau County Department of General Services from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

13. From approximately 1995 until approximately April 1999, as a result of the conspiracy charged herein, the Newark Public Schools purchased approximately \$900,000 of food from CC-1, while the entities serviced by DCAS purchased approximately \$1 million of food from CC-1, and the Nassau County Department of General Services awarded contracts to CC-1 for which CC-1 had bid approximately \$500,000.

14. The activities of the defendant and co-conspirators with respect to the sale of food, including the sale of food to the NYCBOE, DCAS, the Newark Public Schools, and the Nassau County Department of General Services, pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

15. From approximately 1995 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators

engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

16. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of food, primarily fresh fruit and vegetables, to a number of government entities, including the NYCBOE, DCAS, the Newark Public Schools, and the Nassau County Department of General Services.

17. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids on particular contracts to supply produce to the NYCBOE, Beberman participated in meetings and conversations in which he and Lempert discussed and agreed that Beberman would cause CC-1 to submit intentionally high, noncompetitive bids, or not to bid, for parts of those contracts;

(b) Lempert paid Beberman approximately \$125,000 in cash, in exchange for Beberman causing CC-1 to submit intentionally high,

noncompetitive bids, or not to bid, on particular contracts to supply produce to the NYCBOE. Beberman gave approximately \$25,000 of this cash to another co-conspirator, who was also affiliated with CC-1;

(c) Prior to the submission of bids, Beberman and Lempert discussed and agreed how to divide upcoming bids to supply food to DCAS, and Beberman, with the approval of a senior executive officer of CC-1, then caused CC-1 to bid in accordance with their agreement. In addition, at Lempert's request, Beberman gave Lempert money to be distributed among other co-conspirators who were potential competitors for the contracts awarded by DCAS, to induce those competitors not to bid competitively on those contracts. Beberman obtained the cash he gave to Lempert from a senior executive officer of CC-1;

(d) Prior to the submission of bids, Beberman and Lempert discussed and agreed how to divide upcoming bids to supply food to the Newark Public Schools. Beberman then caused CC-1 to bid in accordance with their agreement; and

(e) Prior to the submission of bids, Beberman and Lempert discussed and agreed how to divide upcoming bids to supply food to the Nassau County Department of General Services. Beberman then caused CC-1 to bid in accordance with their agreement.

IV. JURISDICTION AND VENUE

18. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- INCOME TAX EVASION
(26 U.S.C. § 7201)

The United States of America further charges:

19. Michael Beberman ("Beberman") is hereby made a defendant on the charge stated below.

20. Since May 1995, Beberman, a resident of Queens, New York until November 1997, and then of Melville, New York, has been employed as a salesperson by a company that sold food and related items.

21. From approximately May 1997 until approximately September 1998, Beberman received and kept for himself cash payments totaling approximately \$100,000 in exchange for his assistance in causing his employer to submit intentionally high, noncompetitive bids to the Board of Education of the City of New York ("NYCBOE"). Beberman received some of the payments in the Bronx, New York.

22. On or about April 15, 1998, and April 15, 1999, in the Eastern District of New York and elsewhere, Beberman did unlawfully, willfully, and knowingly attempt to evade and defeat a large part of the income tax due and owing by

him and his spouse to the United States of America for each of the tax years 1997 and 1998, by filing and causing to be filed with the Internal Revenue Service Center, false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, wherein he and his spouse failed to report as income a total of approximately \$100,000 in cash that he had received as payment for his role in a conspiracy to rig bids to the NYCBOE; whereas, as he then and there well knew and believed, their true taxable income for those tax years was substantially in excess of the specific sums reported,

upon which additional taxable income there was owing to the United States of America substantial additional income tax.

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7201

_____/s/_____
JOEL I. KLEIN
Assistant Attorney General

_____/s/_____
RALPH T. GIORDANO
Chief, New York Office

_____/s/_____
JAMES M. GRIFFIN
Deputy Assistant Attorney General

_____/s/_____
REBECCA MEIKLEJOHN

_____/s/_____
SCOTT D. HAMMOND
Director of Criminal Enforcement

_____/s/_____
DOUGLAS M. TWEEN

Antitrust Division
U.S. Department of Justice

_____/s/_____
MARY ANNE F. CARNIVAL

_____/s/_____
MARY JO WHITE
United States Attorney
Southern District of New York

_____/s/_____
DEBRA C. BROOKES

_____/s/_____
ELIZABETH PREWITT

Attorneys

Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654